**FARAD CONSTITUTION SHEET NO.**

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# APPELLATE SIDE,
# NAGPUR BENCH, NAGPUR

## SECOND APPEAL NO.198/2006

| Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's orders. | Court's or Judge's Orders |
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**CORAM:- A.B. CHAUDHARI, J.**
**DATED :- 06.03.2007.**

Heard Shri S.C. Bhalerao, learned Counsel for the appellant.

Perused the entire record. The first Appellate Court as a fact found that the appellant is having landed properties as well as business in clothes, fertilizers etc. It is also seen that the respondent had regular dealings of purchase of insecticides and fertilizers as well as other items on credit from the shops of the appellant, and that he could not pay the price thereof due to drought conditions in this area of Vidarbha region. The first Appellate Court has then found that the hardship would be caused to the respondent/defendant, and that it would subserve the ends of justice, if the entire amount of earnest received by the respondent/defendant along with interest by way of damages is directed to be paid to the appellant/plaintiff.

The learned Counsel referring to the cross-examination of respondent argued that the respondent would not become landless as in the very next year from the date of agreement with the appellant, respondent/defendant had sold about four acres of land to one Dilip Karekar. The learned Counsel however could not show any pleading to that effect in the plaint and hence this argument cannot be accepted. He also argued that still the respondent/defendant is having 2.25 cultivable and .88 R Pot Kharab uncultivable land. There is no evidence to this effect on the record of the Courts below.

Having due regard to the entire facts and circumstances on record, I am of the opinion that the first Appellate Court having taken into consideration the comparative hardship that would cause to the respondent rather than appellant who is having other landed properties ultimately has done justice in the matter. The first Appellate Court has factually found that the respondent/defendant would be landless as against the appellant who is having various business as well. In the case of ***K. Narendra...Versus...Riviera, Apartments (P) Ltd***., reported in ***1999 (5) SCC 77,*** in para 29, the Hon'ble Apex Court has held as under ;

> “29. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree

> specific performance is discretionary and the court is not bound to grant such relief merely because it is lawful to do so; the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. Performance of the contract involving some hardship on the defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognized in India."

No substantial question of law is involved in the second appeal. The same is therefore dismissed in limine. No order as to costs.

**JUDGE**

ssw